

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ENGLE HOMES OF COLORADO, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Mark W. Gerganoff, Esq. Frank & Finger, P.C.</p> <p>Address: 29025 – A Upper Bear Creek Evergreen, Colorado 80439</p> <p>Phone Number: (303) 674-6955</p> <p>Attorney Reg. No.: 13240</p>	<p>Docket Number: 38836</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 27, 2003, Judge Nuechter and Steffen A. Brown presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by Jennifer W. Leslie, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Haven at York Subdivision, Adams County, Colorado
(Adams County Schedule No. R0125826 + 165)**

Petitioner is protesting the 2001 actual value of the subject property, which is located on York Street between 144th Avenue and 152nd Avenue in the City of Thornton, Colorado. The subject consists of 206 lots with a typical size of 6,000 square feet.

ISSUES:

Petitioner:

Petitioner contends that the subject has been overvalued. The 41-acre vacant parcel is platted and prairie-like, with some utilities and grading. It is located in a subdivision that offers five basic house plans ranging in base price from \$185,000.00 to \$205,000.00, with lot values of approximately \$22,000.00 each.

Respondent:

Respondent contends that the subject has been correctly valued. The main issue is the sales comparison approach methodology. They have taken into consideration the existing rail spur, lot sizes and nearby oil well.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Todd Stevens, a registered appraiser, presented an indicated value of \$22,903.00 per lot or a present worth of \$3,778,927.00 for the entire property based on the market approach.

2. Petitioner presented five comparable sales ranging in price from \$325,800.00 to \$1,003,400.00. Sales consist of between 12 to 27 finished lots, giving a range of \$27,150.00 to \$37,163.00 per lot. No adjustments were made to the sales.

3. Mr. Stevens testified that there were no sales in the immediate area of the subject, describing sales 1, 2 and 3 as being similar to the subject lots in size, while sales 4 and 5 were larger. All of the comparable sales had better locations. None were next to a rail spur, and all were closer to support services, which is a buyer preference.

4. Mr. Stevens testified that the subject subdivision, located at 152nd and York Street in Thornton, Colorado, is next to a railroad spur in a mostly undeveloped area with no nearby retail outlets. The rail spur is elevated about five to six feet, runs behind the main portion of the subdivision, and is at the most a 20-foot distance from the lots. The lots are typically 6,000 square feet. The rail spur would have a negative affect due to noise and ground shaking, citing another location at Mineral Avenue and Santa Fe Road in Littleton, Colorado where the tracks were moved further to the west due to the same problem.

5. Mr. Stevens testified that the property has a Front Range view, which will disappear as development progresses. Other negative features included an oil well rigging which needed to be moved and the rural setting where people have to travel a half-hour for services or schools.

6. Mr. Stevens testified to the Developmental Cost Buildup Method delineated in Petitioner's Exhibit A, pages 18 through 20; and in Petitioner's Exhibit B, excerpts from the Assessors Reference Library (ARL) Vol. 3, 4.13 and 4.29. It included taking the raw land that was purchased on November 19, 1999 for \$1,612,100.00, then taking the buildup value of each lot including infrastructure amounting to \$19,018.99 per lot. Profit and overhead were added, a risk factor of 3%, an absorption period of 4 years, a discount rate of 11%, and a present worth factor of 3.10245 was applied. The present worth of a lot was calculated at \$22,903.00.

7. Under cross-examination, Mr. Stevens testified that the rural location of the subject lowers the value. He considered the present worth analysis, but used and relied upon the development cost method. Mr. Stevens had researched the market to find sales at the beginning of the takedown period and this information was used for the market comparison. He confirmed the train activity with the Union Pacific Railroad, but does not know how many trains run by a day. Mr. Stevens admitted that the oil well does not affect the property now, but did at the time of purchase.

8. Petitioner is requesting a 2001 actual value of \$3,778,927.00 for the subject property.

9. Respondent's witness, Mr. Don DeLay, a registered appraiser with the Adams County Assessor's Office, presented an indicated value of \$7,808,842.00, or \$37,907.00 per lot for the subject property, based on the market approach.

10. Mr. DeLay valued the subject property using the allocation method and the vacant land method. Three vacant land sales as finished lots were presented in Respondent's Exhibit 1, page 16. They ranged in price from \$225,000.00 for four lots to \$500,000.00 for ten lots, with an average price per lot between \$43,271.00 to \$50,000.00. Vacant undeveloped land sales shown on page 17 of Respondent's Exhibit 1 ranged in sales price from \$1,191,657.00 for 221 lots to \$3,238,200.00 for 470 lots, or a price per lot of \$5,392.00 to \$11,111.00.

11. Mr. DeLay described the allocation method, testifying that a 1:4 land to building ratio or 20% allocated to the land is appropriate. This ratio is typically used by the county for residential property in all subdivisions in Adams County and is generally accepted in the appraisal profession.

12. Mr. DeLay generally agreed with Petitioner's description of the property, except that the area is 55.69 acres. He also agreed that sales close to the subject were difficult to find. Mr. DeLay testified that he was familiar with Petitioner's sales shown on page 16 of Petitioner's Exhibit A, and that he believed those sales were inferior in location to the subject and not comparable.

13. Mr. DeLay testified to using a 10% discount rate and a 2% risk rate, since a higher risk rate would equate to a commercial property. Subdivisions typically sell out quickly, possibly in two years rather than in three to five years. He agrees with the present worth analysis and discount rate of 11%. He understands that the Petitioner used actual costs, which he did not receive, and added that if he had received the actual costs, it might have made a difference. He disagrees with Petitioner regarding the rail activity and testified that he has never seen a train on those tracks even though he goes over them four to six times a day. However, he admitted that maybe in prior years the rail was active. He disagrees that the subject is rural in nature and testified that support services are not far, that a grocery store is about eight minutes away and a gas station is about 5 minutes

away. He believes that the subdivision is desirable because it is not located in the middle of things.

14. In cross-examination, Mr. DeLay testified that the home prices were from actual sales; the final sales price yields the allocated lot price and that none of the homes sold at the listed brochure price due to upgrades. He did not assign a premium for a mountain view and did not discount the sales because of the railroad since the lots along the railroad are about 4,000 square feet larger in size, therefore selling at a higher premium. With regard to the sales in Petitioner's Exhibit 1, page 16; sale 1 is in Willow Run, but he was not familiar with it; sale 2 is definitely inferior and in an older area; sale 3 in Fox Run has duplex lots in half of the subdivision and the density is greater; sale 5 is also in Fox Run.

15. In rebuttal, Mr. Stevens testified that the builder would be dictating the (allocated) lot value because of the sales price whether it is the base price or the base plus the upgrades and may not take into consideration the upgrades that could be considerable. Respondent's sale 1 was started in 1992 when KB Homes took it over from Pride Mark Homes and it included escalators in interests over the years. Respondent's sale 2 is superior and a takedown in 1992 by Sanford Homes with typical lot sizes of 13,000 square feet. Sale 3 is in Fox Run, acquired from Pride Mark Homes by KB Homes in 1998, includes town homes and duplexes, and all back to an open space. As to the sales shown on page 17 of Respondent's Exhibit A, sale 3 is commercial land and sale 4 consists of town homes and patio-type homes.

16. Respondent assigned an actual value of \$6,314,530.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board has reviewed the bulk comparable sales presented by Petitioner and Respondent and finds them to be within the base period. Although the number of sales represented in each transaction is significantly less than the subject's, the Board is convinced that there were few other sales available and believes them to be appropriate.

3. The Board agrees with Respondent and Petitioner that the subject subdivision is in an area where development is just beginning and support services are several miles away. Although the area is mostly undeveloped, the Board questions whether this would be a negative feature as evidenced by development history in the Denver metro area which attests to this type of sprawl within the past years. The Board also questions the negative affect the rail spur has on the subdivision since there was no hard data from the rail owners as to daily activity.

4. The Board agrees that the Development Cost Buildup Method would be an acceptable value tool in the absence of actual sales of building lots. The allocation method used and relied upon by the Respondent is also acceptable, and figures used by both Petitioner and Respondent are appropriate.

5. As to the use of the allocation method by the Respondent, the Board agrees with this method, but finds the sales used to allocate in Respondent's Exhibit 1, page 15 are outside the base period. Therefore, the Board cannot give any weight to this approach.

6. After careful consideration of all the evidence and testimony, the Board concluded that the 2001 actual value of the subject property should be reduced to \$3,778,927.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$3,778,927.00.

The Adams County Assessor is directed to change his records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 2nd day of July, 2003.

BOARD OF ASSESSMENT APPEALS

Judee Nuechter

Judee Nuechter

Steffen A. Brown

Steffen A. Brown

This decision was put on the record

JUL 02 2003

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal

Penny S. Lowenthal

